

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2364 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAFAT @ MAFO @ RAMESH

BHIKHBHAI TADVI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/11/1999

ORAL JUDGEMENT

1. The petitioner came to be detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act'] by virtue of an order passed by Police Commissioner, Ahmedabad city, Ahmedabad, on 20th February 1999 in exercise of powers under sub-section [2] of section 3 of the PASA Act.

2. The detaining authority, in the grounds of detention, considered that the detenu / petitioner is booked in four offences punishable u/s 457 and 380 of IPC. That the petitioner is headstrong person and a gangster. He is involved in committing theft and has created an atmosphere of fear in the society. The authority considered statements of three witnesses and recorded a satisfaction that the conduct of the petitioner has resulted into disruption of public order. The authority also recorded that resorting to less drastic remedy may not prove to be fruitful in preventing the petitioner from pursuing his illegal activities and therefore, detention under the PASA Act is the only remedy.

3. The petitioner has challenged the order of detention by this petition on various counts like delay in passing of order and defective subjective satisfaction in exercise of powers u/s 9[2] of the PASA Act for claiming privilege.

4. Ms. Patel learned advocate appearing for the petitioner submitted that the detaining authority has not considered the statements in a correct perspective. The grounds for recording subjective satisfaction for exercise of powers u/s 9[2] of the PASA Act claiming privilege are not backed by any cogent material and therefore that satisfaction is bad.

5. Ms. Patel submitted that the last offence is alleged to have been committed by the detenu in the month of March 1998 and the detenu was released on bail on 27th August 1998. She submits that the statements indicating offences on 5th November 1998 and 7th December 1998 are recorded subsequently and are concocted one. The said statements were verified on 14th February 1999 and the order of detention was passed on 20th February 1999. Therefore, there is a long delay between the date of commission of offence and even between the dates of release of the petitioner on bail and passing of the order, which is not explained by the detaining authority. She has place reliance on decision of this Court as reported in 1997 [2] GLR 1375 in the case between Elesh Nandubhai V/s C.P. Singh, Commissioner of Police, Ahmedabad. She also press into service an unreported decision in the case of Thakarsi Bhuraji Thakore v/s State of Gujarat in Special Civil Application No.9580/98 decided on 20th July 1999 [Coram : R.M.Doshit, J.].

6. Mr.H.H.Patel, learned AGP submitted that the statements were recorded on 22nd January 1999. The same were verified on 14th February 1999 and the order came to be passed on 20th February 1999. As such, there is no delay in passing the order, as is argued on behalf of the petitioner. He also submitted that the authority has exercised the privilege u/s 9[2] of the PASA Act after taking into consideration all the relevant aspects as has been recorded in the grounds of detention and therefore, that ground is also not available to the petitioner and the petition therefore may be dismissed.

7. Having regard to the rival side contentions, it appears that the detaining authority has exercised privilege u/s 9[2] of the PASA Act only by recording that it is satisfied about the genuineness and truthfulness of the fear expressed by the witnesses on verification of the statements made by the witnesses regarding the unregistered offences. Barring this bald statement, there is nothing on record to indicate as to what were the aspects that were considered by the detaining authority for arriving at a subjective satisfaction about the genuineness and correctness of the occurrences narrated by the witnesses in their respective statements and about the fear expressed by them in respect of the petitioner. Unless there is an indication regarding the material that is considered by the detaining authority while arriving at a subjective satisfaction, a mere statement that the detaining authority is satisfied about the genuineness and correctness of the fear expressed by the witnesses, the purpose for arriving at a subjective satisfaction before passing the detention, would be frustrated. Case of Chandrakant N. Patel v/s State of Gujarat & ors. as reported in 1994 [1] GLR 761 may be employed here profitably. The order of detention therefore, is bad in law, for want of proper application of mind and lacks genuineness.

8. Coming to the next argument advanced by Ms. Patel regarding delay in passing of order, it may be noted that the decisions relied upon by Ms. Patel will not be applicable to the facts of the present case. In the instant case, apart from recording of statements and their verification, there is an action taken by concerned authority which is less drastic in nature for preventing the detinue from pursuing his illegal activities. That action is in the nature of a Chapter Case filed against the petitioner on 2nd January 1999 u/s 109 of the Code of Criminal Procedure, which is still pending. It, therefore, cannot be said that there is total inaction and unexplained delay on part of the detaining authority.

This aspect is recorded in the grounds of detention at para 5 and therefore, the time consumed in resorting to alternative less drastic remedy, has to be excluded while considering the question of delay in taking action under the PASA Act. That ground therefore will not be available to the petitioner. In the decisions relied upon by the petitioner, there was no such explanation tendered by the detaining authority. Unlike the present case, the time gap between the last incident alleged and the order of detention was not explained and therefore, the facts being different, the decision will not help the petitioner.

9. In view of the above discussion, the petition deserves to be allowed on the ground that the subjective satisfaction recorded by the detaining authority for exercise of powers u/s 9[2] of the PASA Act, is bad in law and vitiated.

10. The petition is therefore allowed. The impugned order of detention passed by the Police Commissioner, Vadodara city, Vadodara on 20th of February, 1999 in respect of the petitioner - Mafat alias Mafo alias Ramesh Bhikhabhai Tadvi, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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